No. 86-502

Supreme Court, U.S.
FILED
SEP 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN ALFARONE, JOSEPH GIORDANO, and BRIAN GORDON, as Trustees of the Tapers Industry Insurance Fund and of the Tapers Industry Annuity Fund, DANIEL JONES individually and as a participant in the Tapers Industry Insurance and Annuity Funds, and on behalf of all other persons who are, will be, or have at any time since July 1, 1980 been participants or beneficiaries in the said funds, similarly situated, and UNION APPOINTED TRUSTEES OF THE TAPERS INDUSTRY INSURANCE AND ANNUITY FUNDS,

Petitioners,

—against—

BERNIE WOLFF CONSTRUCTION CORP., EMPLOYER TRUSTEES OF THE TAPERS INDUSTRY INSURANCE AND ANNUITY FUNDS, COMPONENT ASSEMBLY INC., NATASI-WHITE, INC., CIRCLE INDUSTRIES CORP., AND QUICK-WAY FINISHERS, INC.,

Respondents.

BRIEF OF RESPONDENT, COMPONENT ASSEMBLY, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

RICHARD GUY LELAND
170 Old Country Road
Mineola, New York 11501
(516) 248-9500

Attorney for Respondent Component Assembly, Inc.

Of Counsel:

DAVID LAZER
RUSKIN, SCHLISSEL, MOSCOU, EVANS & FALTISCHEK, P.C.

H 21

QUESTIONS PRESENTED FOR REVIEW

1. Do the collection provisions of ERISA, 29 U.S.C. Section 1145, abrogate the equal representation provisions of the LMRA, 29 U.S.C. Section 186(c)(5) and the express language of the underlying employee benefit plan trusts under which contributions are allegedly due ?

2. Do the union appointed trustees of an employee benefit plan have standing to litigate in Federal Court a union jurisdictional dispute in the guise of an ERISA collection suit, where such trustees are not a majority and have not sought to arbitrate a trustee deadlock, despite the explicit requirement that they do so contained in the governing trust agreements and 29 U.S.C. Section 186(c)(5)?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	1
STATEMENT OF THE CASE.....	2
REASONS WHY THE WRIT SHOULD NOT BE GRANTED.....	9
A. THERE IS NO CONFLICT BETWEEN THE CIRCUITS.....	11
B. NOTHING DETERMINED BY THE COURT OF APPEALS "RUNS COUNTER" TO THIS COURT'S HOLDINGS IN SCHNEIDER MOVING & STORAGE CO. V. ROBBINS.....	19
C. THE COURT OF APPEALS' DECISION DOES NOT UNDERCUT ANY CONGRESSIONAL POLICY REGARDING ERISA COLLECTION MATTERS.....	23
CONCLUSION.....	36

TABLE OF AUTHORITIES

CASES:	Page
Alfarone v. Nastasi-White, Inc., No. 84 Civ. 3181 (EHN) (E.D.N.Y. May 30, 1985).....	5,6
Alfarone v. Nastasi-White, Inc., 788 F.2D 76 (2d Cir. 1986)....	4,6,7,8
Amaro v. Continental Can Co., 724 F.2d 747 (9th Cir.1984)...	11,14,15 16,18,19
Amato v. Bernard, 618 F.2d 559 (9th Cir. 1980).....	16,17,18
Barrowclough v. Kidder, Peabody & Co., Inc., 752 F.2d 924 (3rd Cir. 1985).....	11,12,13, 14,15,16
Central States Pension Fund v. Central Transport, Inc., ____ U.S. ____, 105 S.Ct. ,2833, 86 L.Ed.2d 447 (1985)...	19,24,25 25,29,30, 32,33,34
Drywall Tapers & Pointers of Greater New York, Local 1974 v. Operative Plasterers' & Cement Masons' International Association, 601 F.2d 675 (2d Cir. 1979), cert. denied, 444 U.S. 1073 (1980).....	2

Jones v. Nastasi White, No. 85C 2908 (EHN) (E.D.N.Y. October 23, 1985)..... 9

National Labor Relations Board v. Amax Coal Co., 453 U.S. 322, rehearing denied, 453 U.S. 950 (1981)..... 24,28,29, 32,33,34

Rosenthal v. Ann Service Corp., 571 F. Supp. 1299 (S.D.N.Y. 1983)..... 35

Schneider Moving and Storage Co. v. Robbins, 466 U.S. 364 (1984)..... 19,20,21, 23,27,30 31,32

STATUTES:

Employee Retirement Income Security Act ("ERISA")

Section 104, 29 U.S.C.....
Section 1025(c)..... 13

Section 402(a)(1), 29(2) U.S.C.....
Section 1102(a)(1)(2)..... 9,25

Section 404(a)(1),29 U.S.C.
Section 1104(a)(1)(D)..... 8,10,28

Section 502(c), 29 U.S.C.
Section 1132(c)..... 13

Section 503, 29 U.S.C.
Section 1133..... 18
Section 510, 29 U.S.C.
Section 1140..... 14

Section 514(d), 29 U.S.C.
Section 1144(d)..... 9,27

Section 515, 29 U.S.C.
Section 1145..... 1,2,20

Labor Management Relations Act
("LMRA")

Section 301, 29 U.S.C.
Section 185..... 17

Section 302(c)(5), 29
U.S.C. Section 186(c)(5). 1,4,7,8,
9,12,19,
23,24,26,
34

QUESTIONS PRESENTED FOR REVIEW

1. Do the collection provisions of ERISA, 29 U.S.C. Section 1145, abrogate the equal representation provisions of the LMRA, 29 U.S.C. Section 186(c)(5) and the express language of the underlying employee benefit plan trusts under which contributions are allegedly due ?

2. Do the union appointed trustees of an employee benefit plan have standing to litigate in Federal Court a union jurisdictional dispute in the guise of an ERISA collection suit, where such trustees are not a majority and have not sought to arbitrate a trustee deadlock, despite the explicit requirement that they do so contained in the governing trust agreements and 29 U.S.C. Section 186(c)(5)?

STATEMENT OF THE CASE

The genesis of these consolidated appeals is a long-standing jurisdictional dispute between two building trades unions operating in the New York Metropolitan area. Although the underlying dispute was deemed of so little moment to this Court that a petition for certiorari was denied after its resolution by the Court of Appeals in 1979, Drywall Tapers and Pointers of Greater New York v. Operative Plasterers' & Cement Masons' International Ass'n., 601 F.2d 675 (2d Cir. 1979), cert. denied, 444 U.S. 1073 (1980), petitioners have sought to continue litigating that already decided case by trying to posture it as a claim under the Employees Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1101 et seq.

Petitioners, who are the union-appointed trustees of two separate employee benefit funds ("the Funds") established for the benefit of members of Local 1974 of the Drywall Tapers and Pointers Union ("Local 1974"), postured their jurisdictional battle as an ERISA dispute in the following manner. Claiming that work done by members of the competing Local 530 of the Operative Plasters and Cement Masons International Association ("Local 530") was work which should have been done by members of their union, they recommended that lawsuits be brought against several employers, including Component Assembly, Inc., for not having made contributions to the Funds in respect of the disputed work. The employer-appointed trustees, however, did not acquiesce in plaintiffs' tactics

and voted against the commencement of such actions, thus creating a deadlock.

The applicable trust fund agreements ("the Trust Agreements") each require a majority vote of the six trustees for "all actions",[1] as is required by applicable provisions of the Labor Management Reporting Act of 1947, 29 U.S.C. Section 186(c)(5) ("LMRA"). The Trust Agreements also contain statutorily mandated provisions for arbitration in the event of a deadlock among the trustees. See Trust Agreements, Article VII, Section 5 and 29 U.S.C. Section 186(c)(5).

In complete derogation of the provisions of the Trust Agreements and LMRA, petitioners, without demanding

---

[1] Article VII, Section 5 of the Trust Agreement, reproduced at Page 8, footnote 2 of the Brief in Opposition of Nastasi-White, Inc. and quoted by the Court of Appeals at 6a of the Appendix; 788 F.2d at 78.

arbitration, commenced a series of lawsuits against three employers, Component Assembly, Inc., Bernie Wolff Construction Corp. and Nastasi-White, Inc. (collectively "defendants") Each sought damages in excess of $3,000,000. However, petitioners never alleged that contributions were not made to the Funds in respect of work allegedly performed by members of Local 1974. Nor did petitioners allege that persons who performed work for or on behalf of the defendants did not receive contributions to the employee benefit funds in which they were participants.

On May 30, 1984, District Judge Eugene H. Nickeson dismissed one of petitioners' complaints in an action entitled Alfarone v. Nastasi White, Inc., 84 C 3181, a case which is not one of the three consolidated matters which

is the subject of the petition. In its decision, the District Court held that the plaintiffs, who represented a minority of the six trustees of the Funds, had no standing to proceed. After analyzing the Trust Agreements and LMRA the District Court stated:

> "Both the trust agreements and the Taft-Hartley Act make it clear that plaintiffs alone cannot maintain the suit..." (Appendix B 20b).

The District Court thereafter dismissed the complaints in the actions against Component Assembly, Inc. and Bernie Wolff Construction Corp. herein, relying on its decision in the Nastasi-White matter (Appendix 13b and 14b).

The Court of Appeals (Pollack, J.) unanimously affirmed the judgments of the District Court. 788 F.2d 76 (2d Cir. 1986);(Appendix 1a - 9a). The Court of Appeals found;

(a) that the Trust Agreements specifically require that "all actions by the Trustees shall be by majority decision", including proceedings at law to enforce the payment of contributions, 788 F.2d at 78 (Appendix 6a);

(b) the Trust Agreements expressly required that, "in the event any matter presented for decision cannot be decided because of a tie vote, the matter shall remain in status quo pending arbitration" 788 F.2d at 78, (Appendix 7a); and

(c) that such provisions were mandated by Section 302(c)(5) of LMRA, 29 U.S.C. Section 186(c)(5). 788 F.2d at 79 (Appendix 7A).

Based on those findings, the Court of Appeals held that;

> "Plaintiffs' filing of this suit without either receiving the approval of a majority of

> the trustees or employing the arbitration procedure contravenes both the Taft-Hartley Act and the trust agreements." 788 F.2d at 79 (Appendix 7a).

The Court of Appeals also flatly rejected plaintiffs' contention that the collection provisions of ERISA somehow supersede the language of the agreements and the mandates of LMRA Section 302(c)(5). The Court of Appeals pointed out that ERISA contains an express requirement of compliance with trust agreements, 29 U.S.C. Section 1104(a)(1)(D), and that ERISA specifically does not abrogate the equal

representation mandates of LMRA, 29 U.S.C. Section 1144(d). [2]

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

In an attempt to construct reasons why this Court should exercise its discretion to grant certiorari, plaintiffs have seriously mis-stated the letter and spirit of the Court of Appeals holding. Thus, they have sought to portray a holding that Sections 402

---

[2] The third of these three consolidated appeals, Jones v. Nastasi-White, which was brought by an alleged participant of the Funds was also dismissed by the District Court and its, dismissal was affirmed by the Court of Appeals. No such claim by an alleged individual participant was made against Component Assembly, Inc. However, component joins in the assertions and arguments made by respondents Nastasi-White, Inc. and the Employer-Trustees with respect to the reasons why the writ should be denied as to the individual claims.

and 404 of ERISA abrogate neither the express language of the Trust Agreements, nor Section 302(c)(5) of LMRA, as a determination that arbitration is a pre-condition to commencing an ERISA collection action. This mistaken portrayal of the holding below is the building block upon which petitioners' assertions that there is a conflict between the circuits and a conflict between the holding below and the congressional policy underlying ERISA is lain. However, the actual holding does not conflict with holdings of the Court of Appeals for the Third and Ninth Circuits. Nor does it conflict with congressional policy as set forth in the applicable statutes or with prior decisions of this Court. Accordingly, there is no reason why certiorari should be granted.

A. THERE IS NO CONFLICT BETWEEN THE CIRCUITS

Petitioners' assertion that the Court of Appeals' holdings herein conflicts with determinations of the Third and Ninth Circuits in Barrowclough v. Kidder, Peabody & Co., Inc., 752 F.2d 923 (3rd Cir. 1985) and Amaro v. Continental Can Co., 724 F.2d 747 (9th Cir. 1984) is based entirely upon their above-described misreading of the actual holding of the Court of Appeals in these appeals. Moreover, those assertions utterly ignore the many significant distinctions between those two cases and the instant ones. Indeed, upon close analysis, the rationale of the Barrowclough and Amaro courts support the Court of Appeals' finding that federal policy favors exhaustion of remedies in ERISA cases, particularly here where the

trustees are mandated to arbitrate first, by LMRA and the applicable trust agreements.

To begin with, the claim in Barrowclough did not involve an employee benefit fund created under a collective bargaining agreement (and, therefore, governed by LMRA Section 302(c)(5)). Nor was the fund administered by a board of trustees. Thus, the crucial question of whether the plaintiff had to comply with express provisions of a governing document and with LMRA equal representation provisions before commencing suit never came into play.

The \ ERISA claims in Barrowclough involved a claim by a previously discharged stock broker for an accounting and for the payment of benefits under an unfunded deferred

compensation plan established for managerial and highly paid employees; a plan exempted from the bulk of ERISA's requirements. 752 F.2d at 930-931. Plaintiff was a party to a standard arbitration agreement submitting "all disputes arising out of his employment" to the New York Stock Exchange, 752 F.2d at 927-928 an agreement which fell far outside the purview of LMRA.

The Court of Appeals in Barrowclough held that plaintiff could pursue his claim for an accounting under 29 U.S.C. Section 1132(c) without first proceeding to arbitration. 752 F.2d at 940. Because that particular claim was for a purely statutory remedy, i.e. damages under 29 U.S.C. Section 1132(c) for failure to comply with 29 U.S.C. Section 1025 (rendering an accounting on demand), the Court of Appeals held that

it fell exclusively within the jurisdiction of the federal courts. Id.

However, in the instant case, petitioners, as they themselves have described it, are not seeking to enforce a purely statutory right. Rather, they are seeking the payment of benefits to the Funds, a contractual right. Under the holding of Barrowclough which relates to that type of claim, contractual arbitration is a bar to proceeding in the federal courts. 752 F.2d at 939-940.

Nor is Amaro helpful to petitioners' assertion that there is a conflict between the Circuits. The question before that court was whether employees claiming that they were laid off for the purpose of limiting their eligibility for pension and welfare benefits in violation of Section 510 of ERISA, 29 U.S.C. Section 1140, had to

first exhaust grievance procedures under a collective bargaining agreement before commencing suit. The Court of Appeals held that no such exhaustion was required, primarily because the question was purely statutory and because it did not involve the interpretation of an underlying employee benefit plan containing internal appeal procedures. 724 F.2d at 751-752.

The question in the instant matter is a far cry from the questions facing the courts Amaro and Barrowclough. The arbitration required by the Court of Appeals is not the arbitration of a purely statutory claim that an individual has been denied a substantive ERISA right. It isn't even a question of a contractual entitlement to benefits.[3]

---

[3] Under the holdings of both Barrowclough and Amaro, even if the arbitration to which deferral is required covered the underlying claim for the

Thus, to suggest that this internal dispute as to the propriety of bringing an ERISA lawsuit as a second front in a lengthy war over union jurisdiction is the enforcement of a purely statutory right under ERISA, is misleading, to say the least.

The pertinent authorities, including those of the Ninth Circuit relied upon in the Amaro decision, are in complete harmony with the determination of the Court of Appeals herein. The court in Amaro dealt extensively with its prior decision in Amato v. Bernard, 618 F.2d 559 (9th Cir. 1980). Amato involved a claim by a participant in a union employee benefit plan that the trustees wrongfully denied his claim for

---

payment of benefits, that would be arbitration of contractual rather than statutory rights and thus a bar to litigation in the federal courts. See Barrowclough, 752 F.2d at 939; Amaro, 724 F.2d at 751.

benefits. The court held that the participant was required to exhaust internal appeal procedures set forth in the plan documents. 618 F.2d at 567. In so doing, it relied on two well established principles clearly applicable here and which two principles comprise the "firmly established federal policy favoring exhaustion of administrative remedies in ERISA cases" referred to by the Court of Appeals in this matter. 788 F.2d at 79 (Appendix 8a).

The first principle is that "the legislative history of ERISA forges an explicit link between suits under ERISA and suits under Section 301 of the LMRA...and part of that law [applicable to LMRA suits] has been that where administrative remedies are available, they must usually be exhausted by aggrieved party before his Section 301

complaint will be heard..." 618 F.2d at 599 (citations omitted). The second principle is that ERISA itself requires that plans contain administrative remedies for individual claim disputes. See 29 U.S.C. Section 1133. The Amato court reasoned that the existence of such procedures and the policy favoring their use required their exhaustion as a predicate to an ERISA lawsuit:

> "The text of ERISA and the policies underlying that text, far from suggesting that Congress intended to abrogate the exhaustion requirement in the case of suits under ERISA or that sound policy would counsel its abrogation by the courts, suggest just the opposite." Amato v. Bernard, supra, 618 F.2d at 567.

Significantly, the Amaro court did not overrule Amato; instead it harmonized that case with its own holding. Where, as here and in Amato, there were administrative procedures in

the plan designed to afford a forum for the resolution of the claims presented, and those procedures were mandated by Congress, (as they were here pursuant to 302(c)(5) of LMRA) the exhaustion requirement must be enforced. Amaro supra, at 724 F.2d 751.

B. NOTHING DETERMINED BY THE COURT OF APPEALS "RUNS COUNTER" TO THIS COURT'S HOLDINGS IN SCHNEIDER MOVING & STORAGE CO. V. ROBBINS

In a misguided effort to concoct "reasons" for granting the writ where none in fact exist, petitioners allege that the Court of Appeals' holding "appears to run counter" to this court's holdings in Schneider Moving and Storage Co. v. Robbins, 466 U.S. 364 (1984) and Central States Pension Fund v. Central Transport, Inc., ____ U.S. ____, 105 S.Ct. 2833, 86 L.Ed.2d 447 (1985).

These claims simply do not withstand analysis.

Petitioners claim that Schneider stands for the proposition "that no presumption of arbitrability under the collective bargaining agreement is applicable to ERISA delinquency collection suits." (Petition p. 16) This contention both ignores and distorts the facts of both Schneider and this case.

First, this case is not a "delinquency collection" case. No matter how many times petitioners inject that phrase into these proceedings, it does not change the facts. The employers here are obligated under 515 of ERISA (29 U.S.C. 1145) and the Trust Agreements to "make such contributions in accordance with the terms and conditions of such plan of agreement."

Under the Trust Agreements, the employers are obligated to make contributions when a Local 1974 employee "performs work". Although petitioners assiduously avoid saying so, it is undisputed that Local 1974 employees did not perform any of the work for which "delinquent contributions" are now sought; rather Local 530 performed such work. Therefore, as the Second Circuit correctly found:

> "No claim is made by plaintiffs that Local 1974 members have performed work for which benefit contributors are due". 788 F.2d at 78 (Appendix 5(a)).

Second, and critical to understanding this court's decision in Schneider, there was no requirement which compelled the trustees to arbitrate in the trust agreements in Schneider. Indeed, this court noted that there was absolutely nothing in the Schneider trust

agreements which expressly mandated that the trustees arbitrate. Absent such an express condition or any evidence that the parties intended such a condition, there was no requirement of arbitration as a condition precedent to an ERISA suit.

Here, there is an explicit provision in the Trust Agreements,[4]

---

[4] "Article VII, Section 5. All actions by the Trustees shall be by majority decision. Such majority vote shall govern not only this Article but any portion of this Agreement and Declaration of Trust which refers to action by the Trustees. In the event any matter presented for decision cannot be decided because of a tie vote, the matter shall remain in status quo pending arbitration as set forth in Article VIII hereof.

* * * * *

Article VIII, Section 1. In the event the Trustees cannot decide any matter or resolve any dispute because of a tie vote or in the event decisions cannot be made because of the lack of a quorum at two successive meetings of the Trustees, then and in either of such events the Trustees shall attempt to select an impartial

in accordance with 302(c)(5) of LMRA, requiring the trustees to arbitrate in the case of deadlock.

There can be no better evidence of what the parties' agreement provided, and what they intended. Thus petitioners selective out of context quotations from Schneider have no application to the facts before this court.

C. THE COURT OF APPEALS' DECISION DOES NOT UNDERCUT ANY CONGRESSIONAL POLICY REGARDING ERISA COLLECTION MATTERS

Petitioners, by selectively choosing certain phrases from portions of ERISA, and utterly ignoring other relevant provisions, as well as the Trust Agreements and LMRA, contend that the Court of Appeals' decision here undercuts

---

arbitrator to hear and determine the matter, issue or dispute..."

the "Congressional intent" behind ERISA. (Petition pp. 13-14).

This argument distorts both the plain meaning of the statutes and the Trust Agreements. There is no "conflict" between LMRA, ERISA and the holding below; nor did the Court of Appeals, overrule, implicitly or otherwise, the relevant provisions of ERISA.

To the contrary, this Court has consistently held that the parties must abide by 302(c)(5) and the terms of their agreements. E.g., Central States Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., ____ U.S. ____, 105 S.Ct. 2833, 86 L.Ed.2d 447 (1985);, National Labor Relations Board v. Amax Coal Co., 453 U.S. 322, rehearing denied, 453 U.S. 950, (1981). Therefore, there is nothing of

any significance for this Court to determine and thus the writ should be denied.

The, congressional intent with respect to the interplay among LMRA, ERISA and the clear language of the Trust Agreements is readily gleaned from the statute itself. Sections 402(a)(1) and (2) of ERISA, (29 U.S.C. 1102(a)(1), which petitioners studiously avoid, provide that ERISA covered plans must be maintained pursuant to a written agreement delineating the plans' fiduciaries:

> "(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.
> (2) For purposes of this subchapter, the term "named fiduciary" means a fiduciary

> who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly (Emphasis supplied).

Thus, Congressional intent as expressed in the statute requires that the language of the agreements and the language of companion statutes be followed, not abrogated. This renders petitioners' "undercutting" argument not worthy of this Court's time.

The Trust Agreements herein defined a board of six trustees as the "fiduciary" and specifically delineate that control and management is joint, not several, by requiring majority approval of "all actions" as required by LMRA Section 302 (c)(5), 29 U.S.C. Section 186(c)(5).

More importantly, ERISA Section 514, 29 U.S.C. Section 1144(d) provides that nothing in ERISA should be construed to "alter, amend, modify, invalidate, impair or supersede any law of the United States." That language certainly includes LMRA and its equal representation and arbitration of deadlock requirements.

Recent decisions by this Court are entirely consistent with the plain statutory mandate requiring adherence to underlying plan documents and to LMRA. They therefore lay to rest any question that ERISA somehow excuses compliance. In Schneider Moving and Storage Co. v. Robbins, supra, this Court specifically held that the ability of trustees to seek a judicial remedy rather than arbitrate must be ascertained from the parties' intent as reflected in the relevant trust

agreements. See also 29 U.S.C. 1104 (a)(1)(D); 404 of ERISA.

Similarly, in National Labor Relations Board v. Amax Coal Co., supra, this Court specifically noted that disputes between trustees regarding ERISA matters must be the subject of arbitration, or the equal representation scheme outlined in LMRA would be meaningless:

> "...[w]hereas Congress has expressly rejected compulsory arbitration as a means of resolving collective-bargaining disputes, Section 302(c)(5) explicitly provides for the compulsory resolution of any deadlocks among welfare fund trustees by a neutral umpire . Compare 29 U.S.C. Section 158(d) with 29 U.S.C. Section 186(c)(5);
>
> * * * *
>
> [a] trustee deadlock over eligibility matters, like any other deadlock, must be submitted to the compulsory resolution procedure established by Sec. 302(c)(5)" NLRB v. Amax Coal Co., supra, at 453 U.S. 337-338.

Nothing in Amax creates or even suggests that ERISA'S collection sections create an exception to the policy that trustees must seek to resolve their deadlock by arbitration, and not by precipitous resort to the Federal Courts.

Despite petitioners' protestations, nothing in Central States, supra, suggests the existence of such an exception to the general principle of the harmonization of trust agreements, LMRA and ERISA. To the contrary, Central States reiterates the need for bi-lateral administration of employee benefit trusts by representatives of unions and management.

As pertinent to the instant matter, Central States, dealt with the question of whether employee benefit plan trustees had to await a union prosecution of agreements under a separate collective

bargaining agreement before seeking to enforce employers' obligations under ERISA. This Court rejected the employers' claim that enforcement by trustees had to await union grievance arbitration. However, it did not, as petitioners suggest, do so because of an overall policy disfavoring arbitration among trustees. Rather, the basis of this Court's opinion was that requiring grievance arbitration to proceed would place primary reliance for ERISA enforcement upon unions, a result which the Court found inimicable to the spirit and purpose of ERISA. Thus, the Court at _____ U.S. _____, 105 S.Ct. 2842-3 stated,:

> "the notion that federal policy favors union enforcement of an employer's collectively-bargained obligations to a benefit plan, to the exclusion of enforcement by the plan's trustees, simply did not survive last Term's decision in Schneider Moving and Storage

> Co. v. Robbins, 466 U.S. 364 , (1984). In Schneider, we held that a benefit plan could bring an independent action for judicial enforcement of an employer's trust obligations and we in large part relied on the proposition that there was no federal policy favoring trustee dependence on a union's use of a grievance and arbitration system for such enforcement.
>
> Of greatest significance here is this Court's conclusion that compelling benefit plans to rely on unions would erode the protections ERISA assures the beneficiaries, for the diminishment of trustee responsibility that would result would not necessarily be made up for by the union. ERISA places strict duties on trustees with respect to the interests of beneficiaries and unions' duties towards beneficiaries are of quite a different scope."

This Court then, citing Schneider, supra, distinguished between the duties of a union, which run only to the members of its collective bargaining unit and the duties of trustees, to provide specific benefits under the terms

of a plan. _____ U.S. ____, 105 S.Ct. at 2843.

This Court next cited National Labor Relations Board v. Amax Coal Co., supra for the proposition that

> "[t]he atmosphere in which employee benefit trust fund fiduciaries must operate, as mandated by [29 U.S.C. Section 186(c)(5)] and ERISA, is wholly inconsistent with th[e] process of compromise and economic pressure [that characterizes collective bargaining]". ____U.S. _____ at ____, 105 S.Ct. at 2844, citing 453 U.S. 322 at 336.

Thus, this Court has made it clear in Central States that the interests of unions and the interests of trustees as fiduciaries under ERISA are not coterminous. Therefore, it would be a complete derogation of the rationale and holding of Central States to claim that union trustees, acting entirely on their own and in violation of the Trust

Agreements and the equal representation provisions of LMRA may proceed to litigate ERISA claims. Such a result would give credence to actions by union representatives in their capacity as advocates for their bargaining unit rather than as representatives of a fiduciary unit created by the written agreements.

As if there were any question but that Central States does not carve out an exception to LMRA in ERISA proceedings, the Court should note the statement found in footnote 10 to its opinion in Central States, _____ U.S. at _____, 105 S.Ct. at 2840, which cites Amax Coal, supra for the proposition that

> "Congress intended that union welfare funds regulated by the Taft-Hartley Act, See 29 U.S.C. Section 186(c)(5), be operated under traditional trust law principles and this desire became explicit in ERISA".

Clearly, there is no inconsistency between ERISA and LMRA. The LMRA equal representation provisions embodied in 29 U.S.C. Section 186(c)(5) are an integral and essential part of ERISA and may not be cast aside under a claim that they impede swift enforcement of allegedly delinquent contributions, particluarly here where there is no credible allegation, let alone finding, of delinquent contributions.

If the contrary position advanced by petitioners is upheld, it would lay the groundwork

> "for lawsuits by any one trustee, at any time, to advance what is believed to be the best interests of the trust. This would expose funding employers, the body of trustees, and the trusts themselves to the risk of inconsistent obligations and other uncertainties -- precisely the type of evil that the [LMRA], the trust

agreements, and ERISA itself aim to eliminate."

Rosenthal v. Ann Service Corp., 571 F. Supp. 1229, 1232-33 (S.D.N.Y. 1983)

CONCLUSION

FOR THE REASONS SET FORTH HEREIN, THE WRIT SHOULD BE DENIED.

Respectfully submitted,

RICHARD G. LELAND*
David Lazer
Ruskin, Schlissel,
Moscou, Evans &
Faltischek, P.C.
Attorney for Respondent
Component Assembly, Inc.
170 Old Country Road
Mineola, New York 11501
(516) 248-9500

*Counsel of Record